

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>TEAMSTERS HEALTH AND WELFARE FUND, PHILADELPHIA AND VICINITY, et al</b>	:	<b>CIVIL ACTION</b>
	:	
<b>Plaintiffs</b>	:	
	:	
<b>v.</b>	:	<b>NO. 02-4639</b>
	:	
<b>NET CONSTRUCTION, INC.</b>	:	
<b>Defendant</b>	:	
	:	
<b>and</b>	:	
	:	
<b>CITY OF PHILADELPHIA</b>	:	
<b>Garnishee</b>	:	

**ANSWERS TO INTERROGATORIES  
IN ATTACHMENT**

The Garnishee, City of Philadelphia ("City"), by and through its undersigned counsel, hereby responds as follows to the Interrogatories in Attachment.

1. Yes, but any amounts owed are subject to set off for back taxes by the City as well as claims by the sureties RLI Insurance Company ("RLI") and National Surety Company on the specific contracts.
  
2.     a) Final payments of \$2,442.48 and \$17,291.35 owed on contract bid Numbers 2362 and 2547 respectively, subject to set off for back taxes as well as claim by RLI on contract bid number 2547.
  
- b) N/A
  
3. No.
  
4. N/A
  
5. No.
  
6. N/A
  
7. No.

8. N/A
9. No.
10. N/A
11. No.
12. N/A

The City also asserts the following Affirmative Defenses incorporated herein by reference.

#### **AFFIRMATIVE DEFENSES OF GARNISHEE**

1. Net Construction, Inc. ("Net") entered into contracts with the City of Philadelphia ("City") to provide services on or about October 12, 2001 (contract bid No. 2547) and April 14, 2000 (contract bid No. 2362).
2. Under 53 P.S. § § 16081, 16082 and 16083 ("Statute") the City may withhold payment of claim because such person owes taxes to the City.
3. Net Construction, Inc. completed both contracts, however, a hold was placed on payments to Net by the Department of Revenue due to Net's outstanding self-assessed tax obligations.
4. The City placed holds on payments otherwise due Net in the amount of \$17,241.35 under contract bid number 2547 and \$2,442.48 under contract bid number 2362.
5. The Department of Revenue also audited and assessed Net for additional taxes in the amount of \$691,462.00 plus interest and penalties which continue to accrue pursuant to Section 19-509 of The Philadelphia Code after Net failed to respond to the audit notices.
6. Net has failed to pay the self-assessed taxes, appeal the audit assessment or otherwise dispute and/or resolve the tax delinquencies (see attached printout from the Department of Revenue of Net's tax liabilities as of April 30, 2004, as Exhibit "A").
7. Pursuant to the Statute as well as the prevailing case law regarding a creditor's right to set-off, the City asserts its right to set off the outstanding tax liability by the amounts otherwise owed to Net. See Pittsburg National Bank v. United States, 657 F.2d 36 (1981) and United States v. Munsey Trust Co. of Washington, D.C., 332 U.S. 234, 67 S.Ct. 1599 (1947).

8. Additionally, RLI, the surety for contract bid number 2547 has laid a claim to the amounts that the City is holding to set off its tax obligation.
9. The City asserts that its set off rights are superior to the rights of RLI, (See United States v. Munsey Trust Co. of Washington, D.C., 332 U.S. 234, 67 S.Ct. 1599 (1947)).
10. Due to this action, the City is holding funds that are subject to competing claims.
11. The City asserts that RLI is an indispensable party to the determination of this garnishment action.

Wherefore, the City respectfully requests that this court dismiss this action based on the City's right of set off or, in the alternative, make a determination as to whether the funds should be paid to RLI (the surety), the Plaintiff or the City.

Respectfully submitted,

CITY OF PHILADELPHIA  
LAW DEPARTMENT

PEDRO A. RAMOS  
City Solicitor

Dated May 3, 2004

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T015 \_\_\_\_\_TIPS ACCOUNTING SYSTEM  
ACCOUNT LIABILITY04/30/04  
14:29:02

ENTITY: EIN / 232750992\_\_\_\_ NAME : NET CONSTRUCTION INC\_\_\_\_\_  
 ACCOUNT : WAG ADDRESS: 1130 CHURCH RD\_\_\_\_\_  
 ACCOUNT ID : 6555551 WAGE\_\_\_\_\_  
 I&P CALC DATE: 04/30/2004 PERIOD START DATE: \_\_\_\_\_

PERIOD	PRINCIPAL	INTEREST	PENALTY	OTHER	TOTAL	STATUS
WAG	6555551					
- 12311998M	16386.00	10159.32	15157.05		41702.37	CASE
- 12311999M	14981.00	7640.31	11797.53		34418.84	CASE
- 12312000M	5583.00	4209.26	8638.90		18431.16	CASE
- 12312001M	38285.00	10336.95	18663.94		67285.89	CASE
- 12312002M	38019.00	5702.85	12831.42		56553.27	CASE
TOTAL	113254.00	38048.69	67088.84		218391.53	
ENT TOTAL	579351.00	265430.93	444226.34		1289008.27	

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ACCOUNT LIABILITY04/30/04  
14:29:00

ENTITY: EIN / 232750992 NAME : NET CONSTRUCTION INC  
 ACCOUNT : BPT ADDRESS: 1130 CHURCH RD  
 ACCOUNT ID : 6555551 BUSINESS PRIVILEGE  
 I&P CALC DATE: 04/30/2004 PERIOD START DATE:

PERIOD	PRINCIPAL	INTEREST	PENALTY	OTHER	TOTAL	STATUS
BPT	6555551					
12311995Y	NON-FILER					CASE
12311997Y		1305.15	2021.25		3326.40	RECON
12311999Y	135600.00	82716.00	123735.00		342051.00	CASE
12312000Y	140762.00	69893.87	109109.26		319765.13	CASE
12312001Y	129411.00	48552.34	80738.83		258702.17	CASE
04152002Y		17072.76	42681.90		59754.66	
12312002Y	30162.00	3921.06	9425.63		43508.69	CASE
04152003Y	30162.00	3921.06	9425.63		43508.69	CASE
TOTAL	466097.00	227382.24	377137.50		1070616.74	

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**CERTIFICATE OF SERVICE**

I hereby certify that service of a true and correct copy of the attached Answers To Interrogatories In Attachment was made on the 3rd day of May, 2004, to the following by mailing the same in a postage-paid envelope addressed as follows:

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Neal Goldstein, Esquire  
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